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CA State Bar Number: 36730

In the Matter of an Arbitration between	FMCS Case Number Unknown
United Steel Workers, Local 560L	Arrowhead No. 060824-59093-A
and	Grievance No. 13-2006
Arrowhead Products	AWARD OF ARBITRATOR
Grievant: The Local	Date of Hearing January 18, 2007

THE HEARING & PROCESS

On January 18, 2007, a binding arbitration hearing took place between the United Steel Workers Local 560L (hereafter “Union”) and Arrowhead Products Corporation (hereafter “Company”). The real party in interest was and is employee Harry Bonds who was promoted to Brake Operator by the Company. The Union takes issue with this promotion. The hearing took place at the Marriott Meeting Room, 4931 Katella Avenue, Los Alamitos, CA. The hearing was pursuant to Article 4, Section 2 of the Agreement by and between the captioned parties effective March 31, 2003. The Union and was represented by DAVID J. KINS, Sub-District Director, District 12, USW and the Company was represented by WARREN L. NELSON, Attorney. At the close of the evidentiary part of the hearing the Parties were given leave to file closing briefs within thirty days of receipt of the transcript. The Parties did submit briefs on or about March 21. This Award followed.

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1 ISSUE(S)

2 Although there was no agreed statement of the issue, the arbitrator for simplicity
3 adopts the issue more or less as stated in the Union brief: to wit, Did the Company properly
4 or improperly award the job of Brake Operator to Mr. Harry Bonds and, if not, what should
5 the remedy be?

6 FACTS (as found by the Arbitrator)

7 The Union and the Company are parties to a collective bargaining agreement, refer-
8 enced above and hereafter called "Agreement." The Agreement sets forth management
9 prerogatives that are typical including the right "to hire, promote, discharge or discipline for
10 cause" employees (Agreement, Article 2). These rights are not without limits and Article
11 8:1.6 of the Agreement states "Among employees determined by the company personally
12 qualified to meet the minimum requirements of the job, the most senior employee shall be
13 given preference in filling the new jobs, filling vacancies and in departmental transfers."
14 Testimony at the hearing established that the Agreement meant that if no senior employees
15 met the minimum qualifications, the Company could either hire a less senior employee who
16 met the minimum qualifications or recruit such an employee from outside the Company.
17 On or about March 22, 2006, the vacancy in the "brake operator" position was posted. The
18 posting set out the minimum qualifications for the position. Eight employees interviewed
19 for the position and the department supervisor determined that only Mr. Bonds met the
20 minimum qualifications. In fact, the Union does not contest that all other senior employees
21 did not meet the minimum qualifications. Apparently the sole factual claim of the Union is
22 that Mr. Bonds did not meet the qualification either.

23 At this juncture the arbitrator notes almost parenthetically that there are matters at
24 work in this case that are *sub rosa*, or unstated and not part of the facts presented at the hear-
25 ing. The arbitrator infers from some facts presented that Mr. Bonds is not a dues-paying
26 Union member and, according to testimony, he has brought an unfair labor claim before the
27 National Labor Relations Board. This unsettling undercurrent adds drama to this griev-
28 ance, but not a lot of light. That is because the testimony established that Mr. Bonds had
29 the minimum qualifications and that the promotion was, therefore, proper. There is an un-

1 answered question about the extent of the exchange of information between the parties lead-
2 ing to this hearing. For example, the arbitrator was told that the Union examined Mr.
3 Bond's employment application and believed that it proved Mr. Bond's lack of minimum
4 qualifications. Management of the Company, relying on the phrase "determined by the
5 company personally qualified to meet the minimum requirements of the job" believes that
6 gives the Company unfettered discretion to determine the qualifications of an applicant. It
7 is also possible that privacy concerns are behind some of the Company's actions in this case.

8 It seems to this arbitrator that this hearing would have been unnecessary had the Un-
9 ion representatives asked the right questions of the right people. It also seems to this arbitra-
10 tor that "workplace harmony" seems to be flagging here and that the Company owes it to
11 the Union to at least explain why the senior people were "passed over" in such a way as to
12 engender trust. When the Union seemed concerned by the fact that Bonds' old employment
13 application did not really tell the whole story, either the Union should have made pointed
14 inquiry or, even without an inquiry, the Company should have explained to the Union that
15 the old employment application did not tell the whole story about Mr. Bonds and that he
16 met the minimum qualifications because of prior work experience that was not fully detailed
17 or elaborated on his employment application. Mr. Bonds put it quite simply: when he ap-
18 plied for the job he did not want to appear over qualified and so he "abbreviated" some of
19 his prior work experience on the application.

20 ANALYSIS

21 The concerns of the Union are factually unfounded. Mr. Bonds was fully qualified
22 for the position and none of the other more senior applicants were qualified.

23 AWARD

24 The grievance is denied.

25 Respectfully submitted,

26 March 29, 2007.

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HADLEY BATCHELDER, Arbitrator